IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

Bail Appl..No. 6300 of 2007()
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CRIME NO.68/07 OF NOORANAD EXCISE RANGE.

PETITIONER/ACCUSED:
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HARIDASAN,
SREEBHAVANAM, ERUMAKKUZHI, NOORANADU.

BY ADV. SRI.P.SREEKUMAR
SRI.K.S.MANU (PUNUKKONNOOR)

RESPONDENTS: COMPLAINANT:
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1. EXCISE INSPECTOR,
NOORANADU EXCISE RANGE.

2. PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR.

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 23/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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**B.A. No. 6300 OF 2007**

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**Dated this the 23rd day of October, 2007**

**ORDER**

Application for anticipatory bail. The petitioner is the sole accused in a crime registered under Sec.55(a) of the Kerala Abkari Act. The crux of the allegations against the petitioner is that he was found to keep in his possession 1.25 litres of Rum for sale when the offence was detected on 2/10/07. Though the section of offence is shown under Sec.55 (a) of the Abkari Act, the allegation in substance is made under Sec.55(i) of the Abkari Act. The petitioner has criminal antecedents of involvement in admittedly more than one previous crime under the Abkari Act. The learned Public Prosecutor has a case that the petitioner is involved in as many as 5 other similar crimes.

2. The learned counsel for the petitioner submits that the

allegations are false and that the petitioner is consequently entitled for anticipatory bail. At the moment and with the available inputs, I find no reason to disbelieve the version of the prosecution completely and invoke the extraordinary equitable discretion under Sec.438 of the Cr.P.C. Notwithstanding the fact that the wrong section has been shown and notwithstanding the fact that the quantity of the Indian Made Foreign Liquor allegedly possessed by the petitioner falls below the maximum that can be possessed legally by an individual, I am satisfied that this is not a fit case where such extraordinary discretion under Sec.438 of the Cr.P.C. can or ought to be invoked. I agree with the learned Public Prosecutor that this is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail.

3. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail,

after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

**(R. BASANT, JUDGE)**

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P.S. to Judge